IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 9557 of 2006(K)

PETITIONERS:

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1. SAJEEV KUMAR, AMBULAYAM, THAKAZHY P.O.

2. MINI MOL, W/O. SAJEEV KUMAR, DO. DO.

BY ADV. SRIR.AZAD BABU
SRI.V.GIRI

RESPONDENTS:

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1. THAKAZHY SERVICE CO-OPERATIVE BANK,
NO.1832, THAKAZHY REP. BY ITS SECRETARY.

2. THE SECRETARY, THAKAZHY SERVICE
CO-OPERATIVE BANK NO.1832, THAKAZHY.

3. JT. REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), ALAPPUZHA.

* ADDITIONAL RESPONDENTS 4 AND 5 IMPLEADED

*4. RAJI, D/o. INDIRAMMA, RESIDING AT INDEEVARAM,
THAKAZHY P.O, ALAPPUZHA DISTRICT.

*5. INDIRAMMA, W/o.LATE SUKUMARAN NAIR,
RESIDING AT INDEEVARAM,
THAKAZHY P.O, ALAPPUZHA DISTRICT.
(ADDITIONAL RESPONDENTS 3 AND R ARE IMPLEADED AS PER ORDER DATED 18.08.2006 IN I.A.11371/06)

BY GOVERNMENT PLEADER SRI.P.N.SANTHOSH
ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SRI.K.N.V.PANICKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF SALE DEED No.2733/2000 DT. 12.10.2000.

EXT.P2: COPY OF THE ORDER No.AEL 3602 OF 2005 DATED 22.2.2006 ISSUED BY THE THIRD RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF ENCUMBRANCE CERTIFICATE IN PROOF OF MORTAGE DATED 25.7.2005

EXT.R1(b): COPY OF THE CASE REGISTER IN RESPECT OF A.R.No.182/1989 DATED NIL

EXT.R1(c): COPY OF THE ORDER OF THE JOINT REGISTRAR (GENERAL) ALAPPUZHA DATED 8.2.2005.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.9557 OF 2006

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Dated this the 14th day of March, 2007

JUDGMENT

The petitioner is challenging Ext.P2 order of the Joint Registrar of Co-operative Societies (General), Alappuzha, whereby the Joint Registrar has held that since the persons who have taken loan from the society have transferred the security property in violation of the loan agreement, the bank has authority to initiate proceedings under the civil and criminal laws against the petitioners and others. Accordingly, the Joint Registrar has directed the society to take urgent steps to recover the entire loan amount and to release the title deeds to get the mortgage released subject to the decision in C.C.No.414/2000 before the Ambalappuzha Magistrate's Court. The contention of the petitioners is that the petitioners are prepared to pay off all the loan amounts provided the society returns the title deeds in respect of the entire loan amount.

2. On the other hand, the contention of the society is that apart from the liability under the loan, because of certain defalcation of money committed by the brother-in-law of the first petitioner, in which the complicity of the petitioner is also suspected, if ultimately

they are found to be liable, the society would become entitled to proceed against these properties for realisation of the defalcated amounts also.

3. I have considered the rival contentions in Ext.P2. Although, in view of the Division Bench decision of this court it is true that the Joint Registrar has no powers to interfere with the financial transaction between the bank and its borrowers and therefore, Ext.P2 is bad, I cannot grant any relief to the petitioners in this writ petition in respect of return of their title deeds since it would require ascertainment of facts on evidence. In the above circumstances while quashing Ext.P2 order of Joint Registrar, I relegate the petitioners to the remedies available to them under Section 69 of the Co-operative Societies Act for redressal of their grievances in the matter of repayment of the loan amount and return of the title deeds. I make it clear that I have not considered the merits of the contentions of either side and it is for them to agitate all their contentions in the proceeding to be initiated under Section 69.

The writ petition is disposed of as above.

S.SIRI JAGAN,JUDGE

dvs